

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

RICHARD ANTHONY DELFELD, JR. §
v. § CIVIL ACTION NO. 6:11CV43
PAT BURNETT, *et al.* §

ORDER ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE

The Report and Recommendation of the Magistrate Judge, which contains her findings, conclusions, and recommendation for the disposition of this case has been presented for consideration. The Report and Recommendation recommends that Defendant Dan Lowe's Motion to Dismiss (document [#29](#)), Defendant TDFPS and Defendant Peace's Motion to Dismiss (document [#31](#)), Defendants Jimmy Dailey, M.D., and Dailey Medical Clinic, LLC's Motion to Dismiss (document [#35](#)), and Defendants Van Zandt County Sheriff's Department and Van Zandt County Jail's Motion to Dismiss With Prejudice (document [#36](#)) be granted and that the claims against Dan Lowe, Texas Department of Family and Protective Services, Valerie Peace, Dr. Jimmy Dailey, Dailey Medical Clinic, LLC, Van Zandt County Sheriff's Department and Van Zandt County Jail be dismissed with prejudice pursuant to [Fed.R.Civ.P. 12\(b\)\(6\)](#). Plaintiff filed [written objections](#) to the Report and Recommendation on August 12, 2011. In addition, Plaintiff filed an [Amended Complaint](#) on August 2, 2011, and a pre-answer Motion to Voluntarily Dismiss Texas Department of Family and Protective Services (document [#58](#)), construed as a Notice of Dismissal pursuant to Fed.R.Civ.P. 41(a)(1)(A), on August 12, 2011.

Having made a *de novo* review of the written objections filed by Plaintiff and having reviewed the Amended Complaint, the Court finds that the findings and conclusions of the Magistrate Judge are correct and the objections are without merit. The allegations in the Amended Complaint do not change the analysis of Defendants' motions to dismiss. The Court, therefore, adopts the findings and conclusions of the Magistrate Judge as those of the Court. Plaintiff's notice of dismissal as to Texas Department of Family and Protective Services results in the dismissal of the claims against Texas Department of Family and Protective Services without prejudice.¹ In light of the foregoing, it is

ORDERED that Defendant Dan Lowe's Motion to Dismiss (document [#29](#)), Defendant Peace's Motion to Dismiss (document [#31](#)), Defendants Jimmy Dailey, M.D., and Dailey Medical Clinic, LLC's Motion to Dismiss (document [#35](#)), and Defendants Van Zandt County Sheriff's Department and Van Zandt County Jail's Motion to Dismiss With Prejudice (document [#36](#)) are **GRANTED**. The claims against Dan Lowe, Valerie Peace, Dr. Jimmy Dailey, Dailey Medical Clinic, LLC, Van Zandt County Sheriff's Department and Van Zandt County Jail are **DISMISSED** with prejudice. The claims against Texas Department of Family and Protective Services are **DISMISSED** without prejudice pursuant to the notice of dismissal filed by Plaintiff on August 12, 2011 (document [#58](#)).

It is SO ORDERED.

SIGNED this 22nd day of October, 2011.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE

¹A party has an absolute right to dismiss claims without prejudice prior to an answer or motion for summary judgment. The filing of the notice of dismissal "ends the case, and any attempt to deny relief on the merits and dismiss with prejudice is void." *Thomas v. Phillips*, 83 Fed.Appx. 661 (5th Cir.2003).